

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WALTER G. HAYDEN, JR.

Plaintiff,

v.

CALI KNIGHT; GAIL STONE; MICHAEL
PADILLA; CLAUDIA BALDUCCI; ROD
DEMBOWSKI; ZAHILAY GIRMAY; AMY
CALDERWOOD; LUKE OH; JONATHAN
STIER; and BRUCE HARRELL

Defendants.

CASE NO. 2:23-cv-00754-JHC

ORDER DISMISSING SECOND
AMENDED COMPLAINT

I

INTRODUCTION

This matter comes before the Court (1) on Plaintiff Walter G. Hayden, Jr.'s motion requesting service; and (2) to address, sua sponte, deficiencies in Plaintiff's Second Amended Complaint (SAC). *See* Dkt. ## 9–10. Having reviewed Plaintiff's SAC, the remaining record, and the applicable law, the Court DISMISSES the SAC with prejudice and without leave to amend. Dkt. # 9. The Court DENIES Plaintiff's motion requesting service as moot.

II

BACKGROUND

A. The Parties

Original Complaint. In his original complaint, Plaintiff sued 10 individuals. Dkt. # 5 at 2–5. Defendants Claudia Balducci, Rod Dembowski, and Girmay Zahilay are King County councilmembers. *Id.* at 3, 5. Defendants Amy Calderwood, Luke Oh, Jonathan Stier are employees of the King County Ombuds Office. *Id.* at 4. Defendants Cali Knight, Gail Stone, and Michael Padilla are employees of the King County Executive Office. *Id.* at 2, 5. Defendant Bruce Harrell is the Mayor of Seattle. *Id.* at 4.

SAC. The SAC does not name four individuals who were named in the original complaint: Defendants Balducci, Dembowski, Calderwood, and Stier. *See generally* Dkt. # 9. Thus, these individuals are no longer parties to this action. *See Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (1989) (“The fact that a party was named in the original complaint is irrelevant; an amended pleading supersedes the original.”); *see also Brees v. HMS Glob. Mar. Inc.*, No. 3:18-cv-05691-RJB, 2019 WL 4261131, at *2 (W.D. Wash. Sept. 9, 2019) (holding that a defendant was no longer a party to the suit because the plaintiff “deleted any mention” of the defendant in the second amended complaint).

B. Summary of Plaintiff’s Allegations

Although the SAC is not entirely clear, Plaintiff appears to allege as follows: Plaintiff developed a proposal to create “Reconciliation Centers” throughout King County. *See* Dkt. # 9 at 1, 5. Plaintiff spoke to Knight about his proposal. *Id.* at 2 (“I adamantly told Cali Knight that my proposal was not to be broken up because I saw what happens when the fidelity of a model is not kept.”). Knight then “arrang[ed] meetings” for Plaintiff to virtually meet with her colleagues Padilla and Stone to discuss his ideas. *Id.* (explaining that Knight scheduled meetings for Padilla

1 and Stone “to extract [m]y . . . [p]roposal information”). In August 2022, Plaintiff learned that
 2 Councilmember Zahilay sought to create “Crisis Care Centers” in King County, funded by a city
 3 tax levy. *Id.*

4 Plaintiff alleges that the Crisis Care Centers are modeled after his proposed
 5 Reconciliation Centers. *Id.* at 1–2. Plaintiff seems to say that it was his idea for the Department
 6 of Social and Health Services to “house” the Crisis Care Centers, and that he projected that the
 7 Crisis Care Centers would require \$1.2 billion in funding over nine years, apparently the same
 8 amount of funding that the levy is expected to raise. *Id.* at 2–3. Plaintiff says that the King
 9 County Executive Office and King County councilmembers modeled the Crisis Care Centers
 10 after Plaintiff’s proposal “without giving [Plaintiff] payment or rights.” *Id.* at 2.

11 Plaintiff submitted an “ethics complaint” to the King County Ombuds Office.¹ *See id.* at
 12 3. After a preliminary investigation, Deputy Ombudsman Luke Oh concluded that there were no
 13 grounds to further investigate the matter.² *Id.* Plaintiff contends the investigation “showed
 14 [Oh’s] wrongdoing in pure bias and prejudice” because Oh allegedly “thr[ew] personal insults
 15 at” Plaintiff via email. *Id.* Separately, Plaintiff mailed his proposal to Mayor Harrell’s office.
 16 *Id.* at 4. Plaintiff also mailed a “Letter of Approach” to Mayor Harrell’s office, alleging that the
 17 “Command Centers” Mayor Harrell established in downtown Seattle were modeled after
 18 Plaintiff’s proposal. *Id.* at 4, 6–7.

19 C. Previous Action

20 This case is much like a case Plaintiff filed in this Court in November 2022. *See Hayden*
 21 *v. Knight*, No. 2:22-cv-01527-JHC, 2023 WL 2138345 (W.D. Wash. Feb. 21, 2023)

23 ¹ The SAC does not further explain the contents of this ethics complaint. *See generally* Dkt. # 9.

24 ² The SAC does not further describe Oh’s investigation, nor the conclusions Oh reached. *See generally* Dkt. # 9.

1 (“*Hayden I*”). Both cases share the same 10 defendants, and the factual allegations concern the
 2 same set of meetings about Plaintiff’s Reconciliation Center proposal, the same alleged
 3 similarities between Plaintiff’s proposal and Councilmember Zahilay’s Crisis Care Centers, and
 4 the same purportedly biased investigation by the King County Ombuds Office. *Compare*
 5 Complaint, *Hayden I*, No. 2:22-cv-01527-JHC, with Dkt. ## 5–6, 9. Additionally, the original
 6 complaints in both cases involve 42 U.S.C. § 1983 claims based on alleged violations of Article
 7 III, Section 2 and Article I, Section 8 of the U.S. Constitution. *Compare* Complaint, *Hayden I*,
 8 No. 2:22-cv-01527-JHC, with Dkt. #5.

9 On February 21, 2023, this Court dismissed without prejudice Plaintiff’s claims against
 10 the King County defendants—a group consisting of all defendants except for Mayor Harrell.
 11 *Hayden I*, 2023 WL 2138345, at *1. The Court concluded that Plaintiff had not asserted a
 12 legally cognizable claim under section 1983. *Id.* The Court also noted that legislative immunity
 13 may protect the King County councilmembers, and that qualified immunity may protect the other
 14 King County defendants. *Id.*

15 Plaintiff then filed five amendments to his original complaint. *See generally* Dkt. ## 29–
 16 30, 32–34, *Hayden I*, No. 2:22-cv-01527-JHC. On April 14, 2023, the Court dismissed without
 17 prejudice Plaintiff’s claims against the King County defendants for failure to state cognizable
 18 legal claims against these defendants. *See Hayden I*, No. 2:22-cv-01527-JHC, 2023 WL
 19 2955279, at *1 (W.D. Wash. Apr. 14, 2023). And on April 21, 2023, the Court dismissed
 20 without prejudice Plaintiff’s claims against Mayor Harrell for lack of a viable cause of action.
 21 *Hayden I*, No. 2:22-cv-01527-JHC, 2023 WL 3045751, at *1 (W.D. Wash. Apr. 21, 2023)
 22 (explaining that “there is no section 1983 cause of action for a violation of Article I, Section 8,
 23 Article III, Section 1, or Article II, Section 2 of the United States Constitution”). In both April
 24 2023 orders, the Court did not grant leave to amend. *Id.*; *Hayden I*, 2023 WL 2955279, at *1.

1 D. Procedural History

2 On May 23, 2023, in this matter, Plaintiff, proceeding pro se and *in forma pauperis*
 3 (“IFP”), filed his section 1983 complaint. *See* Dkt. # 5. The next day, Plaintiff filed an amended
 4 complaint, again under section 1983. Dkt. # 6. As with the original complaint, Plaintiff alleged
 5 the same 10 defendants as those named in the previous action violated his constitutional rights
 6 under Article I, Section 8 and Article III, Section 2 of the U.S. Constitution. *Id.* at 1. Plaintiff
 7 also alleged that the “malfeasance tort” was the basis of his claims. *Id.*

8 On June 15, 2023, the Court dismissed the amended complaint because Plaintiff had not
 9 included a short and plain statement of his claims, as required by Federal Rule of Civil Procedure
 10 8(a). Dkt. # 8. The Court granted Plaintiff leave to file a SAC to remedy the amended
 11 complaint’s deficiencies. *Id.* at 4. On June 28, 2023, Plaintiff filed a SAC. Dkt. # 9. The SAC
 12 does not allege any specific constitutional violations, but it continues to allege that Defendants
 13 committed “malfeasance.” *See generally id.* (naming action “Second Amended Complaint –
 14 Malfeasance Tort”).

15 **III**
 16 **LEGAL STANDARDS**

17 A court may dismiss an action brought by a plaintiff proceeding IFP at any time if the
 18 action “fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).
 19 The standard for dismissing a complaint for failure to state a claim under 28 U.S.C. §
 20 1915(e)(2)(B)(ii) parallels that under Rule 12(b)(6). *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th
 21 Cir. 2000). Under Rule 12(b)(6), “[a] complaint may be dismissed for failure to state a claim
 22 only when it fails to state a cognizable legal theory or fails to allege sufficient factual support for
 23 its legal theories.” *Caltex Plastics, Inc. v. Lockheed Martin Corp.*, 824 F.3d 1156, 1159 (9th Cir.
 24 2016). A complaint need not include “detailed factual allegations,” but it must contain sufficient

allegations to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A claim is plausible when “the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Because Plaintiff proceeds pro se, the Court liberally construes his pleadings. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972).

IV DISCUSSION

First, it is unclear whether Plaintiff’s claims, as alleged in the SAC, are brought under section 1983. As noted above, the prior two versions of the complaint, *see* Dkt. ## 5–6, were each section 1983 actions, as were each version of the complaint brought in the previous action, *see* Dkt. ## 4, 29, 30, 32–34, *Hayden I*, No. 2:22-cv-01527-JHC. But the SAC does not mention section 1983. *See* Dkt. # 9. The SAC does resemble the prior two complaints; the factual allegations are unchanged, and the basis for the claims appears to be the “malfeasance tort.” *Compare* Dkt. # 9, *with* Dkt. ## 5, 6.

In liberally construing Plaintiff’s pleading, and given Plaintiff’s past reliance on section 1983 for his causes of action, the Court analyzes the claims alleged in the SAC as either brought under (1) section 1983’s framework or (2) the “malfeasance tort.” Either way, the outcome is the same: Plaintiff’s SAC is subject to dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii).

A. Section 1983

To state a claim for relief under section 1983, a plaintiff must show: (1) they suffered a violation of a right protected by the United States Constitution or created by federal statute, and (2) the violation was proximately caused by a person acting under color of state law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Section 1983 is not itself a source of

substantive rights; it merely allows a plaintiff to enforce federal rights conferred by some other federal statute or the U.S. Constitution. *Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979).

The SAC does not mention a violation of Plaintiff's rights protected by the Constitution or created by federal statute. *See generally* Dkt. # 9. Plaintiff seemingly states that the "Malfeasance Tort" is the basis of his claim. *See id.* at 1. But "[o]nly federal rights, privileges, or immunities are protected by [section 1983]. Violations of state law alone are insufficient." *Ybarra v. Bastian*, 647 F.2d 891, 892 (9th Cir. 1981); *see also Gilbert v. Martinson*, No. C20-5262 BHS, 2020 WL 7890815, at *3 (W.D. Wash. November 25, 2020) (finding no viable section 1983 claim when the plaintiff to identify the violation of any federally protected rights). Even if Plaintiff's allegations are true, Plaintiff cannot show that federally protected statutory or constitutional right was violated. Plaintiff fails to state a cognizable legal theory under section 1983.³

³ Defendants are also likely immune from Plaintiff's claims, if brought under section 1983. Councilmember Zahilay is likely protected from suit by legislative immunity. Local legislators are absolutely immune from a section 1983 suit arising out of their legislative activities. *See Bogan v. Scott-Harris*, 523 U.S. 44, 49 (1998) (reasoning that extending legislative immunity to local legislators reflected common law tradition, protected legislative discretion, and avoided deterring service in local government). An act is legislative if: (1) it involves the formulation of policy rather than ad-hoc decision-making; (2) it applies to the public at large rather than to a few individuals; (3) the act is formally legislative in character; and (4) the act bears all the hallmarks of traditional legislation. *Schmidt v. Contra Costa Cnty.*, 693 F.3d 1122, 1135 (9th Cir. 2012). An act is formally legislative in character if a decision was made by voting. *Id.* at 1137. A hallmark of traditional legislation includes policymaking that impacts budgetary priorities and the provision of public services. *Id.* In this case, Councilmember Zahilay's act of proposing countywide Crisis Care Centers likely was legislative: (1) it appears to involve the formulation of a particular policy; (2) it would apply to the public at large; (3) it was likely formally legislative as it would be funded by a tax levy, requiring voting from members of the public; and (4) the act has the hallmarks of traditional legislation because creating Crisis Care Centers, if passed, would impact budgetary priorities and expand public services.

Further, the remaining five Defendants—four King County employees and Mayor Harrell—are likely entitled to qualified immunity. Qualified immunity protects government officials from personal liability for civil damages, unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional rights, and (2) that the right was established at the time of the challenged conduct. *Wood v. Moss*, 572 U.S. 744, 745 (2014). A statutory or constitutional right refers only to federal law, not state law. *Martinez v. California*, 44 U.S. 277, 284 n. 8 (1980). Because Plaintiff identifies no act committed by these five defendants that violated a federal statute or the United States Constitution, *see generally* Dkt. # 9, qualified immunity likely protects these government officials from liability.

B. Malfeasance Tort

Construing the SAC as alleging a “malfeasance tort” claim, Plaintiff fails to state a claim because there is no cognizable malfeasance cause of action in Washington for private citizen plaintiffs against public officers. In the alternative, had Plaintiff alleged a cognizable malfeasance claim, the Court would decline to exercise supplemental jurisdiction over such a claim.

Directly above Plaintiff’s jurisdictional statement, the SAC states, “Malfeasance Tort.” *Id.* Plaintiff provides no further information.⁴ *Id.* In Washington, “[m]alfeasance generally refers to the commission of an unlawful act by a public official.” *Hoflin v. City of Ocean Shores*, 121 Wash. 2d 113, 134, 847 P.2d 428 (1993). But Plaintiff cites no authority, nor has the Court located any, providing a private right of action against public officers for malfeasance. Plaintiff fails to state a claim because there is no cognizable legal theory for him to bring a malfeasance claim.⁵

⁴ The SAC contains only one other reference to malfeasance: “Still, this personal professional accomplishment came at a higher personal cost of severe mental and emotional damages, trauma and distress, personal separation, and darkness of suffering and hurt caused by this Malfeasance financial, emotional and mental, and physical damage.” Dkt. # 9 at 7.

⁵ “[W]here a district court has dismissed all claims over which it has original jurisdiction, it may sua sponte decline to exercise supplemental jurisdiction over remaining state law claims.” *Sikhs for Justice “SFJ”, Inc. v. Facebook, Inc.*, 144 F. Supp. 3d 1088, 1096 (N.D. Cal. 2015) (quotation omitted). And “[a] district court’s decision whether to exercise that jurisdiction after dismissing every claim over which it had original jurisdiction is purely discretionary.” *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639 (2009). Moreover, “in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims.” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988). See *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010) (affirming the district court’s dismissal of state-law claims once all federal-law claims were dismissed). As noted above, Plaintiff has failed to state a cognizable section 1983 claim. With no viable federal claim left, in the interest of comity, even if Plaintiff had stated a claim for malfeasance, the Court would not exercise supplemental jurisdiction over it.

C. Leave to Amend

“The law is clear that before a district court may dismiss a pro se complaint for failure to state a claim, the court must provide the pro se litigant with notice of the deficiencies of [their] complaint and an opportunity to amend the complaint prior to dismissal.” *McGuckin v. Smith*, 974 F.2d 1050, 1055 (9th Cir. 1992), *overruled on other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997). But a court may decline to grant leave to amend if it determines that such amendment would be futile; that is, if it “determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986). “Leave to amend may also be denied for repeated failure to cure deficiencies by previous amendment.” *Abagninin v. AMVAC Chem. Corp.*, 545 F.3d 733, 742 (9th Cir. 2008). *See McConnachie v. Washington State Dep’t of Soc. & Health Servs.*, No. 2:21-CV-00181-SMJ, 2022 WL 2073040, at *1 (E.D. Wash. May 2, 2022) (dismissing the plaintiff’s second amended complaint with prejudice for failure to cure the deficiencies the district court identified in the first amended complaint).

Granting leave to amend would be futile because of Plaintiff’s repeated failures, both in this case and the previous action, to identify a cognizable legal theory for his claims. In its order dismissing Plaintiff’s amended complaint, the Court granted Plaintiff leave to amend. *See* Dkt. # 8 at 5. The Court detailed the complaint’s deficiencies, *id.* at 1–3, and how Plaintiff could remedy those deficiencies, *id.* at 3–4. Still, the SAC does not explain how Defendants violated Plaintiff’s *federal* rights. *See generally* Dkt. # 9. Instead, Plaintiff seems to summarize facts that he believes support a state-law malfeasance claim. *Id.* Additionally, the remaining six Defendants are likely immune from Plaintiff’s claims either under legislative or qualified immunity. *See supra* § IV.A. This is also Plaintiff’s second action before the undersigned involving nearly identical allegations. In the previous action, Plaintiff alleged mostly the same


1 facts over the same purported efforts to steal Plaintiff's Reconciliation Center proposal. *See*
2 *generally Hayden I*, 2023 WL 2138345. The only apparent difference is that Plaintiff changed
3 the basis of his claims from two inapplicable constitutional provisions to the "malfeasance tort."
4 *Compare* Complaint, *Hayden I*, No. 2:22-cv-01527-JHC, with Dkt. # 9 at 1. The Court declines
5 to grant leave to amend because of Plaintiff's "repeated failure[s] to cure deficiencies by
6 previous amendment." *Abagninin*, 545 F.3d at 742.

7 **IV**

8 **CONCLUSION**

9 For the above reasons, the Court DISMISSES Plaintiff's SAC with prejudice and without
10 leave to amend. Dkt. # 9. Plaintiff's motion requesting service is DENIED as moot. Dkt. # 10.

11 Dated this 21st day of July, 2023.

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13 John H. Chun
14 United States District Judge
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